

In the Matter of Merchant Mariner's Document No. Z-196479 and all other Licenses, Certificates and Documents

Issued to: WALLACE N. LEWIS

DECISION AND ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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WALLACE N. LEWIS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 29 March 1956, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-196479 issued to Wallace N. Lewis upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as second cook and baker on board the American SS AFRICAN GROVE under authority of the document above described, on or about 31 May 1955, while said vessel was at sea, he wrongfully struck and kicked a fellow crew member, Boatswain Hugo Kaaman (First Specification); and on the same date, he wrongfully struck a fellow crew member, Walter O'Connor (Second Specification).

At the commencement of the hearing on 25 July 1955, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements. Appellant stated that he acted in self-defense because Boatswain Kaaman came into the galley after Appellant. On the opening day of the hearing, Boatswain Kaaman appeared as a witness for the Investigating Office, Appellant obtained a subpoena for Third Cook Gibson who was still on the AFRICAN GROVE, Appellant expressed his desire to testify in his own behalf, and the Investigating Officer requested an adjournment awaiting the arrival of additional witnesses on board the AFRICAN GROVE.

The hearing was continued numerous times due to the failure of the AFRICAN GROVE to arrive in New York. Appellant was present when the hearing was reconvened on 28 July, 16 August and 29 November 1955. He also appeared at the Coast Guard office in New York three other times in order to make arrangements about reconvening dates and other matters in connection with the hearing. Due to a confusion of dates, Appellant was not present when the

hearing was reconvened on 4 January and 9 January 1955. On the latter date, the Chief Steward of the AFRICAN GROVE testified as a witness for the Investigating Officer. Appellant was signed on the Shipping Articles of the SS SAN JOSE between 3 January and 12 February 1955.

On 12 January 1955, the Examiner mailed a letter, by regular postage, to Appellant at his New York City address telling Appellant that the hearing would be reconvened on 23 March 1955. The letter was not returned undelivered. Appellant signed off the Shipping Articles of the SAN JOSE on 12 February in New York City. The record does not show conclusively whether Appellant received the letter from the Examiner. In his appeal, Appellant does not state whether he personally received the letter.

Appellant was not present when the hearing was reconvened on 23 March 1955. During the course of the hearing, the Investigating Officer introduced in evidence various documentary exhibits including an entry in the AFRICAN GROVE's Official Logbook concerning the incidents in question. There was no evidence presented in behalf of Appellant. Except for the rendering of the decision on 29 March 1955, the hearing was completed on 23 March.

Under these circumstances, it is at least questionable, in my opinion, as to whether Appellant was given a fair hearing. He was present at the New York City Coast Guard office on seven occasions prior to his failure to show up during the latter part of the hearing. After having been present so many times, it is understandable that a person would become tired of appearing only to hear again and again that the hearing was to be continued until a later date.

Although it was improper for Appellant to have failed to appear on 23 March if he received the Examiner's letter, I think Appellant should be given the opportunity to testify in accordance with his expressed desire to do so. Appellant should also be permitted the opportunity to submit other evidence in defense, and, if the Chief Steward is reasonably available, to cross-examine him before the Examiner, or take his deposition. For such purposes, the record will be remanded. If Appellant fails to appear at the reopened hearing on a definite date about which he has been informed, the Examiner is directed to reinstate his original decision with such supplementary notation as may be necessary to explain the action taken. If Appellant does appear, he shall be given a reasonable time which to present his defense.

### ORDER

The order of the Examiner dated at New York, New York, on 29 March 1956, is VACATED. The entire record is REMANDED for such further proceedings as may be deemed appropriate in accordance with this decision.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 9th day of October, 1956.